

GAO

Testimony
Before the Committee on Government
Reform, House of Representatives

For Release on Delivery Expected
at 10:00 a.m. EDT
Thursday, June 26, 2003

COMPETITIVE SOURCING

Implementation Will Be Key to Success of New Circular A-76

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G A O

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Chairman Davis, Ranking Member Waxman, and Members of the Committee:

I am pleased to be here today to participate in the Committee's hearing on the Office of Management and Budget's (OMB) revised Circular A-76. The revisions to the Circular, released May 29, 2003, represent the most comprehensive set of changes to the rules governing the competitive sourcing of commercial services in the federal government since the initial Circular A-76 was issued in 1966.

Today's hearing occurs at a critical and challenging time for federal agencies. Agencies are responding to an environment in which new security threats, demographic changes, rapidly evolving technologies, increased pressure for demonstrable results, and serious and growing fiscal imbalances demand that the federal government engage in a fundamental review, reassessment, and reprioritization of its missions and operations. Federal agencies are increasingly relying on enhanced technology and a range of technical and support services to accomplish their missions. Consequently, it is important for agencies to consider how best to acquire and deliver such capabilities—including, in some cases, who the service provider should be.

Determining whether to obtain services in-house, through contracts with the private sector, or through a combination of the two—in other words, through insourcing, outsourcing, or, in some cases, co-sourcing—is an important economic and strategic decision for agency managers. In the past, however, the government's competitive sourcing process—set forth in OMB Circular A-76—has been difficult to implement. The impact of the A-76 process on the morale of the federal workforce has been profound, and there have been concerns in both the public and private sectors about the timeliness and fairness of the process and the extent to which there is a “level playing field” for conducting public-private competitions. While Circular A-76 competitions historically have represented only a small portion of the government's service contracting dollars, competitive sourcing is expected to grow throughout the federal government.

It was against this backdrop that the Congress enacted legislation mandating a study of the government's competitive sourcing process.¹ This study was carried out by the Commercial Activities Panel, which I chaired. My comments today will focus on how the new Circular addresses the Panel's recommendations with regard to providing a better foundation for competitive sourcing decisions and

¹Section 832, Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001, P.L. 106-398 (Oct. 30, 2000).

the challenges agencies may face in implementing the new A-76. I will also highlight an important issue involving the protest process under the new Circular.

New Circular Provides an Improved Foundation for Competitive Sourcing Decisions

Following a yearlong study, the Commercial Activities Panel in April 2002 reported its findings on competitive sourcing in the federal government. The report lays out 10 sourcing principles and several recommendations, which provide a roadmap for improving sourcing decisions across the federal government. Overall, the new Circular is generally consistent with these principles and recommendations.

The Commercial Activities Panel held 11 meetings, including three public hearings in Washington, D.C.; Indianapolis, Indiana; and San Antonio, Texas. In these hearings, the Panel heard repeatedly about the importance of competition and its central role in fostering economy, efficiency, and continuous performance improvement. Panel members heard first-hand about the current process—primarily the cost comparison process conducted under OMB Circular A-76—as well as alternatives to that process. Panel staff conducted extensive additional research, review, and analysis to supplement and evaluate the public comments. Recognizing that its mission was complex and controversial, the Panel agreed that a supermajority of two-thirds of the Panel members would have to vote for any finding or recommendation in order for it to be adopted. Importantly, the Panel unanimously agreed upon a set of 10 principles it believed should guide all administrative and legislative actions in competitive sourcing. The Panel itself used these principles to assess the government’s existing sourcing system and to develop additional recommendations.

Guiding Principles for Sourcing Policy

Federal sourcing policies should:

1. Support agency missions, goals, and objectives.
2. Be consistent with human capital practices designed to attract, motivate, retain, and reward a high-performing federal workforce.
3. Recognize that inherently governmental functions should be performed by federal workers.
4. Create incentives and processes to foster high performing, efficient, and effective organizations throughout the federal government.
5. Be based on a clear, transparent, and consistently applied process.
6. Avoid arbitrary full-time equivalent or other artificial numerical limits.
7. Establish a process that, for activities that may be performed by either the public or the private sector, would permit public and private sources to participate in competitions for work currently performed in-house, work currently contracted to the private sector, and new work, consistent with these guiding principles.
8. Ensure that, when competitions are held, they are conducted as fairly, effectively, and efficiently as possible.
9. Ensure that competitions involve a process that considers both quality and cost factors.
10. Provide for accountability in connection with all sourcing decisions.

supported one or more elements of the package, such as the recommendation to encourage high-performing organizations (HPO) throughout the government. Importantly, there was a good faith effort to maximize agreement and minimize differences among Panel members. In fact, changes were made to the Panel's report and recommendations even when it was clear that some Panel members seeking changes were highly unlikely to vote for the supplemental package of recommendations. As a result, on the basis of Panel meetings and my personal discussions with Panel members at the end of our deliberative process, I believe the major differences among Panel members were few in number and philosophical in nature. Specifically, disagreement centered primarily on (1) the recommendation related to the role of cost in the new FAR-type process, and (2) the number of times the Congress should be required to act on the new FAR-type process, including whether the Congress should authorize a pilot program to test that process for a specific time period.

As I noted previously, the new A-76 Circular is broadly consistent with the Commercial Activities Panel's sourcing principles and recommendations and, as such, provides an improved foundation for competitive sourcing decisions in the federal government. In particular, the new Circular permits:

- greater reliance on procedures contained in the FAR, which should result in a more transparent, simpler, and consistently applied competitive process, and
- source selection decisions based on tradeoffs between technical factors and cost.

The new Circular also suggests potential use of alternatives to the competitive sourcing process, such as public-private and public-public partnerships and high-performing organizations. It is not, however, specific as to how and when these alternatives might be used.

If effectively implemented, the new Circular should result in increased savings, improved performance, and greater accountability, regardless of the service provider selected. However, this competitive sourcing initiative is a major change in the way government agencies operate, and successful implementation of the Circular's provisions will require that adequate support be made available to federal agencies and employees, especially if the time frames called for in the new Circular are to be achieved.

Ultimate Success of Competitive Sourcing Will Depend on How It Is Implemented

Implementing the new Circular A-76 will likely be challenging for many agencies. GAO's past work on the competitive sourcing program at the Department of Defense (DOD)—as well as agencies' efforts governmentwide to improve acquisition, human capital, and information technology management—has identified practices that have either advanced these efforts or hindered them. The lessons learned from these experiences—especially those that demonstrate best competitive sourcing practices—could prove invaluable to agencies as they implement the provisions in the new Circular.

A major challenge agencies will face will be meeting a 12-month limit for completing the standard competition process in the new Circular. This provision is intended to respond to complaints from all sides about the length of time taken to conduct A-76 cost comparisons—complaints that the Panel repeatedly heard in the course of its review. OMB's new Circular states that standard competitions shall not exceed 12 months from public announcement (start date) to performance decision (end date). Under certain conditions, there may be extensions of no more than 6 months. The new Circular also states that agencies shall complete certain preliminary planning steps before a public announcement. We welcome efforts to reduce the time required to complete these studies. Even so, our studies of DOD competitive sourcing activities have found that competitions can take much longer than the time frames outlined in the new Circular. Specifically, DOD's most recent data indicate that competitions take on average 25 months. It is not, however, clear how much of this time was needed for any planning that may now be outside the revised Circular's time frame. In commenting on OMB's November 2002 draft proposal, we recommended that the time frame be extended to perhaps 15 to 18 months overall, and that OMB ensure that agencies provide sufficient resources to comply with A-76. In any case, we believe additional financial and technical support and incentives will be needed for agencies as they attempt to meet these ambitious time frames.

Another provision in the new Circular that may affect the timeliness of the process is the "phased evaluation" approach—one of four approaches for making sourcing selections. Under this approach, an agency evaluates technical merit and cost in two separate phases. In the first phase, offerors may propose alternate performance standards. If the agency decides that a proposed alternate standard is desirable, it incorporates the standard into the solicitation. All offerors may then submit revised proposals in response to the new standard. In the second phase, the agency selects the offeror who meets these new standards and offers the lowest cost. While not in conflict with the principles or recommendations of the Commercial Activities Panel, the approach, if used, may prove burdensome in implementation, given the additional step involved in the solicitation.

DOD's Competitive Sourcing Lessons Provide Insight for Civilian Agencies

DOD has been at the forefront of federal agencies in using the A-76 process. We have tracked DOD's progress in implementing its A-76 program since the mid-to-late-1990s and have identified a number of challenges that hold important lessons that civilian agencies should consider as they implement their own competitive sourcing initiatives.² Notably:

- competitions took longer than initially projected,
- costs and resources required for the competitions were underestimated,
- selecting and grouping functions to compete was problematic, and
- determining and maintaining reliable estimates of savings was difficult.

DOD's experience and our work identifying best practices³ suggest that several key areas will need sustained attention and communication by senior leadership as agencies plan and implement their competitive sourcing initiatives.

- Basing goals and decisions on sound analysis and integrating sourcing with other management initiatives. Sourcing goals and targets should contribute to mission requirements and improved performance and be based on considered research and sound analysis of past activities. Agencies should consider how competitive sourcing relates to strategic management of human capital, improved financial performance, expanded reliance on electronic government, and budget and performance integration, consistent with the President's Management Agenda.
- Capturing and sharing knowledge. The competition process is ultimately about promoting innovation and creating more economical, efficient, and effective organizations. Capturing and disseminating information on lessons learned and providing sufficient guidance on how to implement policies will be essential if this is to occur. Without effectively sharing lessons learned and sufficient guidance, agencies will be challenged to implement certain A-76

² U.S. General Accounting Office, *Competitive Sourcing: Challenges in Expanding A-76 Governmentwide*, [GAO-02-498T](#) (Washington, D.C.: Mar. 6, 2003).

³ U.S. General Accounting Office, *Best Practices: Taking A Strategic Approach Could Improve DOD's Acquisition of Services*, [GAO-02-230](#) (Washington, D.C.: Jan. 18, 2002); U.S. General Accounting Office, *Information Technology: DOD Needs to Leverage Lessons Learned from Its Outsourcing Projects*, [GAO-03-37](#) (Washington, D.C.: Apr. 25, 2003); U.S. General Accounting Office, *A Model of Strategic Human Capital Management*, [GAO-02-373SP](#) (Washington, D.C.: Mar. 15, 2002); U.S. General Accounting Office, *Acquisition Workforce: Status of Agency Efforts to Address Future Needs*, [GAO-03-55](#) (Washington, D.C.: Dec. 18, 2002).

requirements. For example, calculating savings that accrue from A-76 competitions, as required by the new Circular, will be difficult or may be done inconsistently across agencies without additional guidance, which will contribute to uncertainties over savings.

- Building and maintaining agency capacity. Conducting competitions as fairly, effectively, and efficiently as possible requires sufficient agency capacity—that is, a skilled workforce and adequate infrastructure and funding. Agencies will need to build and maintain capacity to manage competitions, to prepare the in-house most-effective organization (MEO), and to oversee the work—regardless of whether the private sector or the MEO is selected. Building this capacity will likely be a challenge, particularly for agencies that have not been heavily invested in competitive sourcing previously. An additional challenge facing agencies in managing this effort will be doing so while addressing high-risk areas, such as human capital and contract management. In this regard, GAO has listed contract management at the National Aeronautics and Space Administration, the Department of Housing and Urban Development, and the Department of Energy as an area of high risk. With a likely increase in the number of public-private competitions and the requirement to hold accountable whichever sector wins, agencies will need to ensure that they have an acquisition workforce sufficient in numbers and abilities to administer and oversee these arrangements effectively.

We recently initiated work to look at how agencies are implementing their competitive sourcing programs. Our prior work on acquisition, human capital, and information technology management—in particular, our work on DOD’s efforts to implement competitive sourcing—provides a strong knowledge base from which to assess agencies’ implementation of this initiative.

Protest Rights of In-house Competitors

Finally, an important issue for implementation of the new Circular A-76 is the right of in-house competitors to appeal sourcing decisions in favor of the private sector. The Panel heard frequent complaints from federal employees and their representatives about the inequality of protest rights. While both the public and the private sectors had the right under the earlier Circular to file appeals to agency appeal boards, only the private sector had the right, if dissatisfied with the ruling of the agency appeal board, to file a bid protest at GAO or in court. Under the previous version of the Circular, both GAO and the Court of Appeals for the Federal Circuit held that federal employees and their unions were not “interested parties” with the standing to challenge the results of A-76 cost comparisons.

The Panel recommended that, in the context of improving to the federal government’s process for making sourcing decisions, a way be found to level the

playing field by allowing in-house entities to file a protest at GAO, as private-sector competitors have been allowed to do. The Panel also viewed the protest process as one method of ensuring accountability to assure federal workers, the private sector, and the taxpayer that the competition process is working properly.

The new Circular provides a right to “contest” a standard A-76 competition decision using procedures contained in the FAR for protests within the contracting agencies. The new Circular thus abolishes the A-76 appeal board process and instead relies on the FAR-based agency-level protest process. An important legal question is whether the shift from the cost comparisons under the prior Circular to the FAR-like public-private competitions under the new one means that the in-house MEO should be eligible to file a bid protest at GAO. If the MEO is allowed to protest, there is a second question: Who will speak for the MEO and protest in its name? To ensure that our legal analysis of these questions benefits from input from everyone with a stake in this important area, GAO posted a notice in the Federal Register on June 13, seeking public comment on these and several related questions. Responses are due by July 16, and we intend to review them carefully before reaching our legal conclusion.

Conclusion

While the new Circular provides an improved foundation for competitive sourcing decisions, implementing this initiative will undoubtedly be a significant challenge for many federal agencies. The success of the competitive sourcing program will ultimately be measured by the results achieved in terms of providing value to the taxpayer, not the size of the in-house or contractor workforce or the number of positions competed to meet arbitrary quotas. Successful implementation will require adequate technical and financial resources, as well as sustained commitment by senior leadership to establish fact-based goals, make effective decisions, achieve continuous improvement based on lessons learned, and provide ongoing communication to ensure federal workers know and believe that they will be viewed and treated as valuable assets.

Mr. Chairman, this concludes my statement. I will be happy to answer any questions you or other Members of the Committee may have.

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